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BEFORE LINDA MCCULLOCH, SUPERINTENDENT  
OF PUBLIC INSTRUCTION  
STATE OF MONTANA

IN THE MATTER OF

[REDACTED]

OSPI OSPI - 2005-02

MEMORANDUM OPINION  
AND ORDER

BACKGROUND

On September 14, 2005, the Office of Public Instruction received a complaint from [REDACTED]'s father seeking a due process hearing under the "Individuals with Disabilities Education Act" [IDEA]. The complaint summarizes [REDACTED]'s developmental disabilities and claims that in light of these disabilities [REDACTED] is entitled to transportation to and from school as a related service. [REDACTED] School District [REDACTED] [the District] timely challenged the sufficiency of the complaint.

LEGAL STANDARD

Because OPI received this complaint after July 1, 2005, its sufficiency must be measured by the standards set out in the December, 2004, amendments to IDEA known as "Individuals With Disabilities Education Improvement Act of 2004" [IDEIA] 20 USC §1400 *et seq* [the Act]. Sections 615(b)((7)(A)(ii) of the Act [20 [USC §1415(b)(7))A(ii)] set out the matters that must be set out in a complaint, *i.e.*,

- (I) the name of the child, the address of the residence of the child , , , and the name of the school the child is attending;
- (II) . . . .
- (III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
- (IV) a proposed resolution of the problem to the extent known and available to the party at the time.

Section 615(b)(7)(B) of the Act [20 USC §1415(b)(7)(B) provides that “. . . that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).”

Sections 615(c)(2)(A) of IDEA [20 USC §1415(c)(2)(A)] reads as follows:

The due process complaint notice required under subsection (b)(7)(A) of this section shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A) of this section.

The District challenged the sufficiency the complaint on the ground that “there is no reference to transportation in [REDACTED] IEP.” Thus for [REDACTED]’s complaint to meet the standards set out above it must at a minimum state facts showing: (1) whether the matter of transportation as a related service was raised with the child’s IEP team in the course of preparing [REDACTED]’s IEP; (2) if so, what disposition the IEP team made of the request and (3) why, in any event, [REDACTED] requires transportation to and from home as a related service in order to insure that he receives a free appropriate public education [FAPE].

#### ORDER

IT IS ORDERED that [REDACTED]’s complaint be and it is hereby dismissed with leave granted to [REDACTED]’s parent to file an amended complaint that conforms to the standards set out above.

Dated this 30<sup>th</sup> day September 2005.

  
\_\_\_\_\_  
Ross W. Cannon, Hearing Officer

CERTIFICATE OF SERVICE

This is to certify that on the 30<sup>th</sup> day of September 2005, the foregoing Memorandum Opinion and Order was mailed first class; postage prepaid, and faxed as indicated:

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Ross W. Cannon, Hearing Officer

OSPI